



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/866,922	05/30/2001	Jesus Martinez Almela	P/189-153	5165

2352 7590 12/10/2003

OSTROLENK FABER GERB & SOFFEN
1180 AVENUE OF THE AMERICAS
NEW YORK, NY 100368403

EXAMINER

HRUSKOCI, PETER A

ART UNIT	PAPER NUMBER
----------	--------------

1724

DATE MAILED: 12/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

09/866,922

Applicant(s)

ALMELA, JESUS MARTINEZ

Examiner

Peter A. Hruskoci

Art Unit

1724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 October 2003 and 16 October 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

Art Unit: 1724

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1 "the remaining solids" lacks clear antecedent basis.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pescher et al. in view of Rohrer and Waldmann. Pescher et al. disclose (see col. 2 line 3 through col.4 line 64) a process for treating liquid manure substantially as claimed. The claims differ from Pescher et al. by reciting steps for introducing homogenized liquid manure into a tank, and eliminating liquid from a solid phase by flotation. Rohrer disclose (see col. 3 lines 7-73) that it is known in the art to flocculate liquid manure in a collection tank by thoroughly mixing coagulants such as high molecular weight cationic compounds with the manure. Waldmann disclose (see col. 8 line 41 through col. 9 line 33) that it is known in the art to utilize filtration or air flotation to aid in separation of solids from livestock wastewater that has been flocculated with cationic polyacrylamides. It would have been obvious to one skilled in the art to modify the process of Pescher et al. by utilizing the recited introducing and eliminating steps in view of the teachings of Rohrer and Waldmann, to aid in separating solids from the liquid manure. With regard to claim 2, it is submitted that the oxidizing agents disclose in Pescher et al. are considered patentably indistinguishable from the bactericidal substance. The specific amounts and stirring

Art Unit: 1724

time utilized, and the specific sequence of addition for the bactericidal substance, would have been an obvious matter of process optimization to one skilled in the art, depending on the specific manure treated and results desired, absent a sufficient showing of unexpected results.

Applicant argues that claim 1 has been amended to replace the term “comprising” with “consisting of”, thus excluding the additional steps of the prior art as applied above. It is submitted that this amendment does not appear to be recited in claim 1. Furthermore, the exclusion of additional treatment agents and their function would have been prima facie obvious to one skilled in the art, absent a sufficient showing of unexpected results. It is noted that the use of “consisting of” in claim 1 would appear to exclude the use of the bactericidal substance of claim 2.

Applicant alleges that the use of a homogenization step prior to the addition of the polyacrylamide is not disclosed in any of the cited prior art references, and has important advantages, as it permits a reduction in the quantity of polyacrylamide that is needed. It is submitted that the teachings of Pescher et al. as applied above disclose the addition of a cationic polyelectrolyte such as cationic polyacrylamide to an organic waste such as manure, with stirring. It is submitted that the stirring utilized in Pescher et al. is considered patentably indistinguishable from the recited homogenization step. Furthermore, applicant has not presented sufficient factual evidence to support the above allegation.

Applicant alleges that the advantages of the instant invention are explained in Fig. 3 on page 1965 of a “2002 American Society of Agricultural Engineers citation, and the specific web cite report enclosed with the amendment dated 10-3-03. It is submitted that the specific test

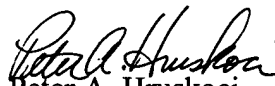
Art Unit: 1724

conditions utilized in this citation and report do not appear to be commensurate with the scope of the instant claims. It would appear that the quantity of polyacrylamide utilized in Pescher et al. is optimized depending on the specific type of manure treated. Furthermore, applicant has not supplied sufficient comparative evidence with the prior art used in the above rejection to support the above allegation.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter A. Hruskoci whose telephone number is 703-308-3839. The examiner can normally be reached on Monday through Friday from 6:30AM-4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Blaine Copenheaver can be reached on 703-308-1261. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.


Peter A. Hruskoci
Primary Examiner
Art Unit 1724

12/6/03